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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,294	08/02/2001	Rudolf Ehrmaier	951/50213	3900

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EXAMINER

BURCH, MELODY M

ART UNIT

PAPER NUMBER

3683

DATE MAILED: 09/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/920,294

Applicant(s)

EHRMAIER ET AL.

Examiner

Melody M. Burch

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-5 and 7-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,3,7 and 8 is/are rejected.
- 7) ☒ Claim(s) 4,5 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 30 June 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2, 3, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamoto et al. in view of WIPO 00/37836.

Re: claims 2 and 7. Nakamoto et al. show in figures 1 and 2A an electronic control unit C,25 for automatically activated parking brake 4 in a motor vehicle capable of being started without a mechanical key wherein the electronic control unit 25 automatically activates the parking brake in dependence on at least one specified operating parameter (angle of inclination as disclosed in col. 8 lines 5-21) of the motor vehicle, wherein the electronic control unit includes means for arbitrarily preventing the electronic control unit from automatically activating the parking brake when the activation would otherwise occur based on the at least one specified operating parameter as disclosed in col. 6 lines 34-41, the means being arbitrarily triggerable by a user of the motor vehicle via elements 15,15a while being on a particular angle of inclination as shown in figure 2A.

Nakamoto et al. do not include the limitation of the at least one operating parameter being a shutting off of an internal combustion engine of a motor vehicle.

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WIPO 00/37836 teaches in lines 13-14 of the abstract the use of automatically activating the parking brakes when an internal combustion engine is turned off. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the at least one specified operating parameter of Nakamoto et al., to have included the shutting off of an internal combustion engine, as taught by WIPO 00/37836, in order to provide an alternate means of automatically applying the brakes under emergency conditions or as an alternate means of safeguarding against operator forgetfulness.

Re: claims 3 and 8. Nakamoto et al. show in figure 2A wherein the means for arbitrarily preventing the automatic activation of the parking brake comprises a key button in the form of an OFF switch 15, 15a coupled with the electronic control unit, the key button being directly manually actuatable via the driver to arbitrarily prevent the automatic activation of the parking brake by the electronic control unit (while being on a particular angle of inclination).

#### ***Terminal Disclaimer***

3. The terminal disclaimer filed on 6/30/03 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of any patent granted on application no. 09/920293 has been reviewed and is accepted. The terminal disclaimer has been recorded.

#### ***Allowable Subject Matter***

4. Claims 4, 5, and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the

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limitations of the base claim and any intervening claims. Although DE-19801064 teaches the use of an electronic authorization verification device having a wireless code transmission, DE-19801064 does not suggest or teach the use of the device in such a capacity that the insertion of the device into a holding shaft arbitrarily prevents the automatic activation of a parking brake.

### ***Response to Arguments***

5. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

6. Applicant's arguments, see pg. 8, filed 7/1/03, with respect to the 112 rejection of the phrase "startable without a mechanical key" have been fully considered and are persuasive. The 112 second rejections of claims 1 and 8 have been withdrawn. The specification has described the "key" in the present invention as an electronic "key".

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melody M. Burch whose telephone number is 703-306-4618. The examiner can normally be reached on Monday-Friday (7:30 AM-4:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Lavinder can be reached on 703-308-3421. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

mmb 8/29/03  
mmb  
August 29, 2003

  
9-3-2003  
MATTHEW C. GRAHAM  
PRIMARY EXAMINER  
GROUP 310